

By:

Lucio

S.B. No. 1057

A BILL TO BE ENTITLED

AN ACT

relating to protections for consumers in default on credit transactions involving manufactured homes; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 347.355 and 347.356, Finance Code, are amended to read as follows:

Sec. 347.355. REPOSSESSION ON DEFAULT. (a) Except as provided by Subsection (b), if ~~if~~ a consumer is in default, the creditor who possesses the first recorded perfected security interest may repossess the manufactured home pursuant to judicial process.

(b) If the manufactured home is abandoned ~~[affixed to real property]~~, the creditor, after giving all appropriate notices under Section 347.356, the contract, and other law, and after the expiration of the applicable time periods ~~[notice]~~, may remove the manufactured home without judicial process ~~[from the real property in accordance with the applicable provisions of the Business & Commerce Code as if it were personal property]~~.

Sec. 347.356. REQUIREMENTS FOR ACTION TO REPOSSESS, FORECLOSE, OR ACCELERATE PAYMENT OF ENTIRE DEBT. (a) Before taking any ~~[An]~~ action to repossess a manufactured home, foreclose a lien on a manufactured home, or accelerate payment of the entire unpaid balance of a credit transaction, the creditor must:

1           (1) send to the consumer and any guarantors, by  
2 regular and certified mail, return receipt requested, a notice of  
3 default informing the consumer of the alleged default and stating  
4 that the consumer is entitled to cure or dispute the default within  
5 the 30-day period following the date the notice is postmarked; and

6           (2) allow the consumer that period to cure or dispute  
7 the default [~~comply with the regulations of the Office of Thrift~~  
8 ~~Supervision relating to the disclosure required for repossession,~~  
9 ~~foreclosure, or acceleration except in extreme circumstances,~~  
10 ~~including abandonment or voluntary surrender of the manufactured~~  
11 ~~home~~].

12           (b) For a default on payments or other charges owed,  
13 notwithstanding any other provision of this subchapter, the notice  
14 required by Subsection (a) may not include amounts other than the  
15 amount owed that is in default. The creditor may collect other  
16 amounts authorized by this subchapter only if the consumer fails to  
17 cure or does not successfully dispute the default as permitted by  
18 this section.

19           (c) If the negotiations that related to the execution of the  
20 contract, sale, lien, or security interest were conducted primarily  
21 in a language other than English, the creditor shall provide a copy  
22 of the notice required by Subsection (a) in the language in which  
23 the negotiations were conducted.

24           (d) The notice required by Subsection (a) must be in the  
25 following or a substantially similar form:

26           To: \_\_\_\_\_ [Name of Consumer]

27           Date: \_\_\_\_\_

1           NOTICE OF DEFAULT AND RIGHT TO CURE OR DISPUTE A DEFAULT

2           \_\_\_\_\_  
3           [Name, address, and telephone number of the creditor]

4           \_\_\_\_\_  
5           Account Number [if any]

6           \_\_\_\_\_  
7           [Brief identification of the credit transaction]

8           YOU ARE NOW IN DEFAULT ON THIS CREDIT TRANSACTION. YOU HAVE A  
9           RIGHT TO CURE OR DISPUTE THIS DEFAULT IN WRITING WITHIN 30 DAYS FROM  
10          THE POSTMARKED DATE OF THIS NOTICE.

11          If you cure the default, you may continue with the contract as  
12          though you did not default. Your default consists of:

13          \_\_\_\_\_  
14          [Describe default alleged.]

15          Cure of default: Within 30 days from the postmarked date of  
16          this notice, you may cure your default by:

17          \_\_\_\_\_  
18          [Describe the acts necessary for cure, including, if  
19          applicable, the amount of payment required and an itemized list of  
20          amounts due and any deferral charges.]

21          Dispute of Default: Within 30 days from the postmarked date  
22          of this notice, you may dispute your default by:

23          \_\_\_\_\_  
24          [Describe the acts necessary to dispute the default.]

25          Creditor's Rights: If you do not cure or dispute your default  
26          in the time provided by the notice, we may exercise our rights  
27          against you under the law by:

1 \_\_\_\_\_  
2 [Describe the action.]

3 Note: We cannot repossess the manufactured home without  
4 authorization from a court, unless the home is abandoned. If we  
5 institute proceedings in court, you will be given notice of such  
6 proceedings.

7 If you have any questions or dispute the default, write  
8 \_\_\_\_\_ [the creditor] at the above address or call  
9 \_\_\_\_\_ [creditor's designated employee] at  
10 \_\_\_\_\_ [direct telephone number] between the hours  
11 of \_\_\_\_\_ and \_\_\_\_\_ on \_\_\_\_\_ [state days of the week].

12 If this default was caused by your failure to make a payment  
13 or payments, and you want to pay by mail, please send a check or  
14 money order; do not send cash.

15 (e) It is a false, misleading, or deceptive act or practice  
16 within the meaning of Section 17.46, Business & Commerce Code, if a  
17 creditor or debt collector threatens, represents, or states to a  
18 consumer that the creditor or debt collector may repossess a  
19 manufactured home or take another action permitted by this section  
20 unless the creditor or debt collector also states or provides  
21 notice that:

22 (1) the consumer has the right to cure or dispute the  
23 default; and

24 (2) any repossession requires judicial approval by a  
25 court unless the manufactured home has been abandoned.

26 (f) A person who violates this section is liable for a civil  
27 penalty in an amount of \$500 for each violation. The attorney

1 general or the prosecuting attorney in the county in which the  
2 violation occurs may sue to recover a civil penalty under this  
3 subsection. The attorney general shall, and the prosecuting  
4 attorney may, deposit a civil penalty collected under this  
5 subsection to the credit of an account in the general revenue fund.  
6 The prosecuting attorney may retain a civil penalty collected under  
7 this subsection.

8         SECTION 2. The change in law made by this Act applies only  
9 to a repossession, foreclosure, or acceleration of debt maturity  
10 under Section 347.356, Finance Code, that occurs on or after the  
11 effective date of this Act. A repossession, foreclosure, or  
12 acceleration of debt maturity occurring before the effective date  
13 of this Act is governed by the law in effect at the time the  
14 repossession, foreclosure, or acceleration occurred, and the  
15 former law is continued in effect for that purpose.

16         SECTION 3. This Act takes effect September 1, 2005.

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MAR 07 2005

Filed with the Secretary of the Senate

**BUSINESS AND  
COMMERCE**

MAR 21 2005

Read and referred to Committee on \_\_\_\_\_

Reported favorably \_\_\_\_\_

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Read second time, \_\_\_\_\_, and ordered engrossed by: { unanimous consent  
a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

Senate and Constitutional 3 Day Rule suspended by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

Read third time, \_\_\_\_\_, and passed by: { A viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_  
SECRETARY OF THE SENATE

OTHER ACTION:

\_\_\_\_\_  
Engrossed

\_\_\_\_\_  
Sent to House

Engrossing Clerk \_\_\_\_\_

\_\_\_\_\_  
Received from the Senate

\_\_\_\_\_  
Read first time and referred to Committee on \_\_\_\_\_

\_\_\_\_\_  
Reported \_\_\_\_\_ favorably (as amended) (as substituted)

\_\_\_\_\_  
Sent to Committee on (Calendars) (Local & Consent Calendars)

\_\_\_\_\_  
Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_  
Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)  
by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting.

\_\_\_\_\_  
Read third time (amended); finally passed (failed to pass) by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_  
Returned to Senate.

\_\_\_\_\_  
Returned from House without amendment.

\_\_\_\_\_  
Returned from House with \_\_\_\_\_ amendments.

\_\_\_\_\_  
Concurred in House amendments by a viva voce vote \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_  
CHIEF CLERK OF THE HOUSE

\_\_\_\_\_ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

\_\_\_\_\_ Senate conferees instructed.

\_\_\_\_\_ Senate conferees appointed: \_\_\_\_\_, Chairman; \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_

\_\_\_\_\_ House granted Senate request. House conferees appointed: \_\_\_\_\_, Chairman;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ Conference Committee Report read and filed with the Secretary of the Senate.

\_\_\_\_\_ Conference Committee Report adopted on the part of the House by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

**OTHER ACTION:**

\_\_\_\_\_ Recommitted to Conference Committee

\_\_\_\_\_ Conferees discharged.

\_\_\_\_\_ Conference Committee Report failed of adoption by: \_\_\_\_\_

{ a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays